

FILED
IN CLERKS OFFICE

UNITED STATES DISTRICT COURT
DISTRICT COURT OF MASSACHUSETTS

U.S. DISTRICT COURT
DISTRICT OF MASS

CIVIL ACTION
NO.:

MANUEL PENA

v.

SUPERINTENDENT OF MCI
SOUZA BARANOWSKI STATE PRISON
& INDIVIDUAL OFFICER

AFFIDAVIT OF CHRISTOPHER L. MALCOLM

I, Christopher L. Malcolm, hereby depose and state as follows:

1. I am an attorney licensed to practice law in the Commonwealth of Massachusetts.
2. I represent the legal interest of Manuel Pena, including in connection with his matter out of the Roxbury Division of Boston Municipal Court.
3. On or about March 24, 2022, we appeared in Roxbury Court for trial, and Mr. Pena was brought into Court by the Dept of Corrections.
4. When Mr. Pena, was brought into the Courtroom, he was distraught, shaken, and not able to focus on his trial. He reported being inappropriately touched and attacked by

the Dept of Corrections Officer that transported him into the Roxbury Courthouse from the van.

5. Mr. Pena was unable to go to trial that day as a result of the incident that occurred when he was dropped off at the Court. I had to request to continue his trial for this 2011 case, and the Court granted the Defendant's request to continue the case due to the clear impact the incident had on Mr. Pena that day.
6. Later that day, I requested that the video evidence be preserved from the lockup area and all areas that the Court Officers maintain video surveillance for in and around the building.
7. I conferenced with Mr. Pena and he reported that the Dept of Corrections Officer was inappropriately touching him so he asked the State Court Officer to take custody of him as soon as he could. The Dept of Corrections Officer reacted aggressively and pushed Mr. Pena into a cell and against the wall causing injuries.
8. The case was continued to April 21, 2022 for trial. When we appeared for trial on April 21, 2022, the case did go forward and the jury ultimately acquitted Mr. Pena of the charges in Roxbury.

9. I later learned that the Dept of Corrections Officer wrongfully filed a discipline ticket against Mr. Pena to protect himself.
10. As a result, I interviewed the State Court Officer that witnessed the incident. She did not see Mr. Pena act out in any way. She did not see Mr. Pena act aggressively in any way. She did not see anything out of the ordinary for the delivery of this inmate, Manuel Pena. She did not see Mr. Pena giving anyone a hard time. She heard the commotion and responded to help Mr. Pena.
11. This affidavit was drafted for the purpose of preserving the issues for Mr. Pena as a summary of my involvement and does not contain all information known to me.

Signed under the pains and penalties of perjury
this 17th day of May, 2022

/s/ C. L. MALCOLM

Christopher L. Malcolm